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# The Right to Bail and the Implications of The Presumption of Innocence under the Criminal Procedure Code (CPC): A Practice Approach

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## ABSTRACT

*This study assesses the right to bail and the implication on the principle of presumption of innocence under the Criminal Procedure Code of Cameroon (CPC) from a practice-based approach. Employing the qualitative research methodology and the doctrinal method that involves in-depth analysis of Conventions, statutes and cases, it is revealed that trial proceedings in Cameroon often violate the right to bail of the defence as was the case in Ndula Raphael Fuambokang by Justice Anne Ngem Afong of the Fako High Court. The only moment when substantial justice can be done to the defence is when a criminal trial is conducted in strict respect of the accused person's right to bail ranging from investigation to arraignment, trial and judgment and appeals if necessary. It is therefore recommended that the CPC should be amended to mandate the court to consider bail as a fundamental human right that must be granted if the suspect meets the requirements for bail.*

**Keywords:** *Bail, Implications, Presumption, Innocence.*

## I. INTRODUCTION

From the advent of democracy, one of the constitutional ideals that most African democracies are still grappling with has been on how to uphold, promote and protect the rule of law, judicial independence and press freedom amongst others. The case of the sovereign state like Cameroon is not an exception. The concept of bail being an ancillary to the rule of law has been politicized with the judiciary doing little or nothing to remedy the situation. Bail, being the focus here takes its roots from antiquity and the Magna Carta doctrines of fairness, due process and respect of the dignity of the human person even in the midst of adversity of a charge or allegations of crime against a citizen by the state or its agents.

The Magna Charta laid the foundation for the rule of law and stressed the importance of due

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process in these terms<sup>2</sup>; “no freemen shall be taken or imprisoned or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land”.

From the foregoing, the libertarian ideologies of the Magna Charta declarations above ought to have invoked a new spirit of legal and inspirational reasoning that would guarantee the attainment of the quality of all persons before the law as enshrined in the preamble of the 1996 Constitution of Cameroon.

Thus, Cameroon like every other sovereign country’ ought to be seen to be obeying its own laws and upholding the commitments undertaken thereof, Such as the ideals of the respect of the due process of the law, respect of the rights of the citizens, due diligence and non-interference, independence of the judges, press freedom, freedom of movement, freedom of association and freedom of the press amongst others.

This, bearing in mind the fact that no meaningful progress can be made in the business of human rights protection without a correspondent establishment of a robust, vibrant and independent judiciary and the press through which the citizens can ventilate their grievances as well as raise questions that affect their private rights..

Cameroonian Judges must subscribe to the Magna Charta ideology which is to the effect that liberty is the rule and remand being the exception. The courts on their parts, must equally be primarily ready and willing to uphold the rights of everyone suspected or accused of having committed a crime on the one hand, and also be willing to enforce the rights of such persons to bail in deserving cases on the other hand, regardless of whose interest is involved including that of the state or its actors.

The concept of the rule of law ensures that due process is not only followed, but that it should be manifestly seen to have been followed in every given case, regardless of sex, tribe, colour, gender age as well as linguistic affiliations. The reason is because the rule of law provides the necessary checks and balances upon which democracy is effectively anchored. Thus, holding public office holders accountability for their acts and omissions which affect private interest constitutes a demonstration of democratic values enshrined both in the constitution and duly ratified treaties and conventions.

No viable society can exist today without a credible, legitimate, and widely accepted legal regime. In other words, both the law and the rule of law are indispensable pivots of any

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<sup>2</sup> Article 39, Magna Carta (1215).

legitimate political society. A system governed by the rule of law is more likely to prevent the collapse of social and political order. The concept of the rule of law is therefore intricately tied to the preservation of human rights. Including the respect and protection of the fundamental guarantees of those standing trial either as accused persons, defendants or convicted felons as the case may be. One of such important guarantees is the right to bail of a person who is presumed to be innocent until his guilt is established by his accuser(s). These ideals of inalienable rights, fundamental liberty and freedom of the human person as stipulated in the 1948 Human Rights Charter<sup>3</sup> are have suffered gross violations in the case of Cameroon orchestrated by executive interference in court proceedings. Especially when the regime's interest or when the interest of its members is involved as witnessed in the case of *Fon Doh Gwanyin v. The People*.<sup>4</sup>

The right of every human being to live freely without discrimination as to sex, nationality, race, colour or creed, has led to the enactments of several legal frameworks such as the Penal Code of 1972, the 1996 Constitution as amended with its preambe, the Criminal Procedure Code (CPC) of 2005, the 2006 Law on Judicial Organization<sup>5</sup> amongst others. The country has equally ratified several human rights instruments both at the regional and international domains, with a view to protect those rights and freedoms that are inherent to the enjoyment of life, liberty and the pursuit of happiness. These have come to be imbedded in what is usually referred to as the three generations of rights<sup>6</sup>. These generational rights cannot be conveniently enjoyed in a country where the judiciary is still grappling with the idea of bail as a constitutional right requiring a robust protection by the courts.

## II. PRESUMPTION OF INNOCENCE

Presumption of innocence is the treatment of a suspect on a no-fault basis of guilt before the

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<sup>3</sup> The Universal Declaration of Human Rights, 1948: The Universal Declaration of Human Rights (UDHR) usually referred to as the 'The Universal Code of Conduct' or 'The Human Rights Bible' , was adopted in 1948 by the General Assembly of the United Nations Organization. It has set the standards for human rights and Justice in the world which State-Parties must not derogate. It has the force of 'soft' law because it is merely persuasive and provides a useful guide to nations around the world with no binding effects. The preambular provisions of the UDHR, have amongst other things placed significant value and recognition of the legitimate right of all members of the human family to seek for judicial remedies in a free, impartial and independent tribunal. To that effects, articles 6, 7, 8, 9 and 10 of the UDHR are very instructive. Because they are have carefully prescribed the dual objectives of protecting the twin pillars of natural justice-such as fair hearing( *audi alterem partem*) and non-interference( *nemo judx in causa sua*).

<sup>4</sup> Suit No. BCA/53c/2006 unreported: Where the Bamenda Court of Appeal acquitted the Fon, a die-heart ruling party (CPDM) baron from the 15 years jail term as slammed by the Ngoketunjia High Court, having found the accused guilty for capital murder. Some of the judges of the trial court who sentenced the CPDM baron were sent on punitive transfers while others were demoted. The executive exploited the loopholes in article 37 which has subjected the independence of the judiciary under the executive's control.

<sup>5</sup> Law No. 2006/015 of 29 December, 2006 on Judicial Organization in Cameroon.

<sup>6</sup> A combination of the rights to development and healthy environment.

determination of his case.<sup>7</sup>This right is guaranteed in the Universal Declaration of Human Rights (UDHR).<sup>8</sup> Pursuant to article 11 the UDHR,

Every suspect of criminal offence has the right to be presumed innocent, and treated as innocent, until proved guilty according to law in the course of criminal proceedings.<sup>9</sup>

Presumption of innocence is stated in the Preamble of the Cameroon Constitution.<sup>10</sup>It is also enshrined in Section 8 of the CPC. It states:

Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence.<sup>11</sup>

Sona<sup>12</sup> notes that right that should be respected from the preliminary stages of criminal proceedings that is, arrest and police investigation to final judgment. According to him, it must not necessarily be violated by a trial judge. It can as well be violated by a competent authority that plays a major role in criminal proceedings.

From the above stated provisions, it is clear that the principle of presumption of innocence is consistent with the right to be released from detention if the interests of justice permit. Gissing<sup>13</sup> notes “that during pre-trial incarceration, where bail is not granted to the accused persons, they are deprived of their liberty under circumstances where a court has not pronounced a verdict on their guilt, and where the presumption of innocence still operates in their favour”. It follows from the above that the right to bail has a bearing on the principle of presumption of innocence.

### **III. BAIL AS A RIGHT OF THE DEFENCE UNDER THE CRIMINAL PROCEDURE CODE, (CPC)**

#### **(A) The Nature of Bail under the CPC**

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<sup>7</sup>See L., Laudan, ‘The Presumption of Innocence: Material or Probatory?’, *11 Legal Theory* 335, 2005.

<sup>8</sup> On 10 December 1948, the Universal Declaration of Human Rights was proclaimed and adopted by the General Assembly. The extraordinary vision and determination of the drafters produced a document that for the first time set out universal human rights for all people in an individual context.

<sup>9</sup>UDHR, Article 11; the ICCPR, Article 14(2); ACHPR, Article 7(1)(b) and Paragraph 2(D) of the African Commission Resolution, ACHPR/Res. 4(XI) 92.

<sup>10</sup> It stipulates that “every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence”.

<sup>11</sup> Article 38(1) of the Criminal Procedure Code of Cameroon.

<sup>12</sup> G., Sona, *The Protection of the Rights of Pre-trial Detainees in Cameroon. A Legal Perspective*, GRIN Verlag, 2024, p.15.

<sup>13</sup> A., Gissing, *Bail and the presumption of innocence: A comparative legal study*, Masters Thesis, University of South Africa, 2022, p.45.

Bail is however not defined by the Criminal Procedure Code which is the principal legislation governing criminal trials in the country. This omission appears to have created the major problems of application and interpretation. These problems of application and interpretation in the case of Cameroon have further have been exploited by the prosecution against the defence. Contrary to the subject appreciation by the prosecution, the right to bail is a constitutional guarantee that the Cameroonian judiciary must uphold inalienable and fundamental right.

Simply put, bail is a temporary release from law custody. It could be a temporary release from police custody, prison custody awaiting trial or post -conviction release from the Appeal or Supreme Court pending appeal. Bail is not an acquittal from criminal trial or a discharge from prosecution. It is a mere change of custody. That is, a release of someone lawfully remanded from lawful confinement to restricted liberty.

Section 218 of the Criminal Procedure Code states:

Remand in custody shall be an exceptional measure which shall not be ordered except in the case of a misdemeanor or felony. It shall be necessary for the preservation of evidence, the maintenance of public order, protection of life and property, or to ensure the appearance of an accused before the Examining Magistrate or the Court. Provided that a person with a known place of abode shall not be remanded in custody except in the case of a felony.

Thus, by the CPC standard as expressly stipulated above, bail is simply a temporary release of someone who is subjected into investigation or a criminal trial and who shall not be remanded into the police or prison custody by the authorities if they fulfill the conditions stipulated by the same code.

By virtue of section 222, 224, 225 and 226 (g) CPC, the legislature has not only distinguished between rights to self and conditional bail of an accused person but it has also diligently outlined the parameters to be considered by the authorities involved when dealing with issues of bail of an accused person, suspect or defendant as the case maybe.

Sections 222(1)(2) of the Criminal Procedure Code (CPC), on the rights of the suspect or accused person with respect to self-bail.

It states:

The Examining Magistrate may, at any time before the close of

the preliminary inquiry, and of his own motion withdraw the remand warrant and grant bail. Where bail is not granted as of right, or by the Examining Magistrate of his own motion, it may be granted on the application of the defendant or his counsel and after the submission of the State Counsel, when the defendant enters into a recognizance to appear before the Examining Magistrate whenever convened and undertakes to inform the latter of his movements.

On its part, section 224(1) (2) CPC dealing with conditional bail provides:

#### Section 224(1) CPC

Any person lawfully remanded in prison custody may be granted bail on conditions that he fulfills one of the conditions referred to in section 246(g), in particular to ensure his appearance either before the judicial police or any judicial authority. (2)The provisions of subsection (1) above shall not apply to persons charged with felonies punishable with life imprisonment or death.

It follows naturally from the foregoing that, the only moment that a suspect or an accused person in Cameroon can initiate an application for a temporary release from custody is when his arrest and detention is lawful. Thus, in every other case other than a lawful remand, the suspect or the accused person does not need to follow the formalities of filing an application for his bail.

Under any circumstances noticeable of unlawful arrest and detention the suspect or the accused person enjoys an automatic right to be admitted to conditional or self-bail as the case may be. Any opposition, objections and protest by any party in the trial should be treated and considered as frivolous, scandalous and gross misconduct. Such objections or opposition should be overruled with cost against the objector as deterrence against delay tactics.

The reasoning and view of the author above is very consistent with the literally meaning of the first arm of section 224(1) of the Criminal Procedure Code which has been carefully enacted with a view to create an automatic legal right to bail in favour of the suspect in police custody or an accused person who is not lawfully or unlawfully remanded in police custody or custody awaiting trial. Thus, the mere mention of the words; lawfully remanded in prison custody as expressly provided in section 224 supra, has eliminated all possibilities requiring any exercise of discretion by the court or the authority keeping the detainee where the arrest and detention is

not lawful as stipulated in section 224 CPC above.

What the judge or court needs to do *simpliciter* in any such cases of unlawful arrest and detention is to *suo moto* order for the immediate release of the detainee who is unlawfully arrested or detained. Any other attitude from the court or judge short of an order for immediate release of anyone who is unlawfully arrested or unlawfully remanded is tantamount to compromise. The due process of the law requires that what is what doing is what doing very well by the person that the law imposes the onus to do so. Therefore, it is the responsibility of the prosecution who alleges the commission of a crime to ensure that discreet steps taken to ventilate its legal grievances are in strict compliance with the due process of the law in force.

The prosecution must make sure also that there is no recorded or visible case of any latent or patent breach of the procedure whatsoever. And wherever there is defect or a breach of procedure regarding the arrest and detention of the accused person, the judge or the authority detaining the suspect does not need to wait until the end of the trial to acquit the accused person, during which time, an irreparable damage caused to the accused person would have aggravated, but rather the court or judge should simply just order for the immediate release of the accused person on the face of such a legality before the beginning end of the trial.

Thus, the subjective and very unpopular view of the contemporary judges in the country which seeks to place a suspect or accused person's legal right to bail at the same level in all circumstances of lawful and unlawful arrest and detention as erroneously construed by Lord Justice James Agobor of the Southwest Court of Appeal in *Atayo Asukwo Okon & 1 Or v. The People of Cameroon & 1 Or*<sup>14</sup> is for all intent and purposes a gross violation of the right of the defence. Furthermore., coming from the appellate court such a ridiculous precedent of James

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<sup>14</sup> CASWR/04/ICC/20. Unreported decision of the Court of Appeal Southwest Region. The accused person was the chief of Shell Creek in the Bakassi area. He hailed from Akwa-Ibom State South-South Nigeria and a father of 11 children and 2 wives. He was arrested without a warrant by a certain magistrate Dogo, a deputy state counsel of Mundemba after the accused blatantly refused to cooperate with a demand of bribe of N50, 000 (naria), equivalent to a 150,000frs then. The accused later died in custody awaiting trial at Buea Central prison due to medical negligence. He complained severally to his counsel Nicholas Ogbe Keme of a severe pain in his right toe. His counsel made multiple futile attempts to secure his bail from the Inquiry Control Chamber of the Southwest Court of Appeal so that he could undergo proper medical check-up in the hands of his family. Rather, the court placed his very complicated health in the hands of the prison nurses with very inadequate facilities and experiences to quickly detect and handle complicated health situations. Due to persistent pain, the nurses decided to extract the affected toe by chopping it off. The situation escalated. The whole leg had developed gangrene after it was poorly handled by the prison nurses who ignorantly chopped-off the right toe of the victim unknowing that he was a diabetic and cancerous patient. The accused was then evacuated to the Buea Regional Hospital where he died in the theatre same day. Had the Court of Appeal upheld the fundamental right to bail of Chief Atayo Asukwo Okon by ordering for his immediate release as one who was unlawfully remanded in custody the calamity culminating to the loss of life could have been averted.



Agbor above must be criticized on the plain point that Justice James Agbor, being a judge with a common law background, he was expected unlike the inquisitorial judges to be seeing exercised a much higher judicial standard that should be seeing promoting the rights of the defence rather than that of the prosecutor who is the agent of the state.

The above standard has been contemplated by the national legislation under section 231 of the Criminal Procedure Code. Section 231 CPC, is to the effect that any person who is on bail is presumed to be under judicial supervision. Such a person is not yet free from the charge in court and may still be re-arrested if he jumps bail or violates one of the conditions attached by the competent authority for the bail grant. The right to bail therefore is not a discharge and acquittal but a mere change of custody from confinement to a moderated liberty under judicial supervision. As a fundamental legal right the temporary release of the accuse person is very vital because it would greatly impact on his right to adequately prepare for his defence, be able to fund his legal fees, ensure effective and convenient communication with his counsel and above all, it can prevent him from serving an illegal jail terms.

Consequent upon the above therefore and most respectfully, Lord Justice James Agbor of the Court of Appeal Buea erred in law for not having upheld this right as it ought to be thereby undermining the provisions of sections 8 on the presumption of innocence of Atayo Asukwu Okon as read together with section 231 all of the Criminal Procedure Code. Failure to do by the Judge is not unconnected to timidity, corruption and discrimination especially as the accused person was a Nigerian national.

Especially so, after it was evident as presented by the defence counsel to the Court of Appeal that his client, chief Atayo Aukwo Okon who initially never a suspect was simply invited by the corrupt state counsel in his capacity as the chief and leader in his community to assist the said state counsel in the investigation of an arson incident that occurred around the area orchestrated by some unknown men of bad faith in the Bakassi.

It was equally established as a fact that the accused person Atayo Asukwo Okon only became a suspect when he refused to submit as others to a demand of money as bail fee that was advanced by the corrupt state counsel as a condition before he could exonerate the former from a potential criminal trial, a request which the former refused to pay on grounds that he was not a suspect and may implicate himself if he went ahead to pay.

The defence also established that not only was the trial of the accused motivated by financial interest, the defence went to demonstrate to the Court of Appeal Southwest Region that since from 14<sup>th</sup> day of May, 2019 when the state counsel remanded its client in prison custody no

material steps were being taken to charge him to court to establish the accuracy, veracity and credibility of the allegations made.

The only progress that was made so far after dumping the accused person unlawfully in the prison custody for over one year without trial was that the same actors at the legal department Mundemba who conceived the malicious and diabolic plot that implicated the accused person braved it even further to make financial gains from the accused person. They permeated the prison walls with help of their corrupt agents to extort about a ransom from this vulnerable detainee promising to ensure his release which never happened.

### **(B) Lawful Arrest, Detention and the Right to Bail**

Section 30 of the Criminal Procedure Code has clearly set out the legal indicators of a lawful arrest and detention. They include but not limited to the following;

First and foremost, the arrest must have been regularly ordered by the competent authorities in charge; secondly, the arrest must have been triggered by a complaint lodged at the appropriate service with the power to carry out criminal investigation; thirdly, the arrest must be for investigation and for investigation only. It cannot be for fun and not motivated by a desire for cash; fourthly, the arrest must be in strict respect with the process of the law of procedure governing arrest as provided for in section 30(1) of the Criminal Procedure Code.

Lastly, the arrest must also be in strict respect of the right of the defence as expressly provided for in section 122 of the Criminal Procedure Code. Such as being devoid of torture, intimidation, harassment, victimization, bullying, exploitation, right to be informed of the offence alleged, right to know the identity of complainant, right to know the identity of the judicial police officer executing the arrest, his official capacity and the police unit that he is attached, right to counsel, right to receive family members, right to receive medical attention etc.

Therefore where it is established from the face of the action that the suspect or accused person's arrest is patently illegal and his remand in custody is unlawful or it is in violation of the due process of the law, the court or judge entertaining the matter is under a constitutional obligation to order for his release *suo moto*.

Thus, the right to bail, being a fundamental human right ought to be accorded maximum respect by the state's courts. It must not under any circumstance be treated as a favour to be dished out by the judiciary or the executive. This has to be the standard even in situations where the executive's interest is involved regardless of the authority and powers which article 37(3) of the 1996 Constitution has vested in the executive to guarantee the independence of the court system.

However, despite the express provisions of the Criminal Procedure Code as cited above, some judges in the country are still grappling with the issue of enforcement of the right to bail of the Cameroonian citizens when faced with bail applications as witnessed in the case of *Justice Ayah Paul Abine v. The State*.<sup>15</sup>

The rationale behind this reckless violation of the right to bail on the part of the judiciary is not unconnected to timidity, corruption and unholy interference by the executive arm of government. The constitutional standard as provided for in the preamble is that bail is free to all regardless of the offence. Thus, the idea of ousting the power of the court to grant bail as stipulated in section 224(2) of the Criminal Procedure Code is unconstitutional. This is because section 224(2) of the Criminal Procedure Code is inconsistent with the provisions of the preamble of the 1996 Constitution (as amended) above which make all offences bailable. The contention that all offences are bailable assumes greater importance when viewed from the plain point that in every democratic state, liberty is the rule and remand the exception.

The above basic constitutional requirements are amenable to each and every suspect, accused person or defendant as the case may be. This is consistent with the provisions of section 8(1) (2) of the Criminal Procedure Code. It is contended that the right of the defence as enshrined under section 3 of the Criminal Procedure Code cannot be enjoyed nor promoted when the accused is in detention as was the situation in cases of *The People of Cameroon v. Sigala Remi Tita*<sup>16</sup>, *The People of Cameroon v. Minang Ronald*<sup>17</sup> as well as *The State v. Bibixy Mancho*<sup>18</sup>

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<sup>15</sup> Communication No.678/2017. Lord Justice Ayah Paul Abine was a super scale magistrate and 2<sup>nd</sup> Advocate General of the Supreme Court of Cameroon. He was suspected of sympathizing with the so-called Anglophone separatists. On that ground, he was arrested without a warrant by a special force from the Secretariat of Defence in his Yaounde residence in 2016, tortured and detained without a single interrogation or reason advanced. He spent over 9 months in detention. His Lawyers were prevented from accessing him. His family was given restricted and regulated access to give food and clothing only. While in detention, he originated a *Habeas Corpus* application, wherein he challenged the illegality of his arrest and unlawful detention. Rather unfortunate, from the trial High Court of Mfoundi, Appeal Court of the Center Region as well as the Supreme Court of Cameroon, Justice Ayah Abine's right to bail was denied. Dissatisfied with the ruling, the aggrieved Ayah seised the African Commission of Human and Peoples' Rights, Banjul-Gambia. Where he raised the issues of denial of justice, persecution (manhunt) as well as political victimization of his person. The Commission did not hesitate to declare Ayah's complaint admissible thereby raising a strong and arguable *prima facie* case against the state of Cameroon. The mere admissibility of Ayah's complaint by the regional tribunal after same was rejected by the national jurisdiction clearly demonstrates how subjective the states' courts and the state of Cameroon treats the issues of bail of the Cameroonian people.

<sup>16</sup> CFIB/32F/2013: Where about 80 members of the University of Buea Students' Union(UBSU) were arrested, detained and tried and convicted without bail by a Buea Court of First Instance for charges of destruction and disruption of services on the order of the then VC Pr. Nalova Lyonga

<sup>17</sup> CFIB/024F/2013; The court of First Instance Buea per Justice Ntuba Bea Beatrice refused to grant bail to the executives of UBSU even when all the charges brought against them were essentially misdemeanours which are bailable. She proceed to rush with a trial and conviction some of the accused persons.

<sup>18</sup> The military Court judge in Yaounde blatantly refused to enforce the right of bail of the accused person person Mancho Bibixy. This, despite the fact that the accused person was presumed innocence under section 8CPC. The accused was tried while in detention and given an outrageous sentence. Since then he has been under incarceration.

### **(C) The Powers of the Court to Grant Bail**

It can be argued that section 222(1) which empowers the examining magistrate to withdraw a remand warrant and grant self-bail before the close of preliminary inquiry is not in conflict with the fair hearing provisions as stipulated in section 8CPC. The state's courts can protect and promote the right bail by invoking their inherent powers own their own motion (*suo moto*) or upon the application of the parties concerned.

This is because the cardinal principles governing the grant of bail by the judge are specifically the protection of the right to fair hearing, unfettered appearance of the accused person, protection of his dignity, nature of the offence as well as the personality and substance of the accused person amongst others. Such that where necessary, the accused person can challenge the discretion of any court or judge which refuses to admit him or her to bail pending trial as aptly done by the former Manager of Cameroon Refinery Company (SONARA) in the case of *Charles Metouck v. The People*,<sup>19</sup> the trial magistrate's court decision refusing bail was challenged by the applicant. The applicant argued that his right to bail is a constitutional right and should be accorded to him pursuant to sections 3, 8, 222 and 224 of the Criminal Procedure Code, (CPC) as he was still presumed innocent. It was the contention of applicant that the conditions for granting bail are not specified by the CPC. He further argued that even if they are specified, the grant of bail depends not on the discretion of the court only but other factors such as personality, personality and substance of the accused person amongst others.

The above brilliant argument notwithstanding, the appellate court dismissed the applicant's application and went ahead to uphold the argument of the state to the effect that it is not the law for the appellate court to investigate the exercise of discretion of any judge which has been exercised judicially and judiciously Their Lordships stated further that except such discretionary powers have been proven to have been exercised recklessly and negligently any attempt to review the exercise of the discretion of the court below in the instant case would amount to abuse of due process of the law.

Their Lordships rationalized the law that the trial magistrate Tasi of the Limbe court of First Instance had not violated any law for rejecting the application of the former boss of SONARA Charles Metouck and others charged for various offences bothering on misappropriation of state

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<sup>19</sup> Suit No. CASWR/18/2013 unreported decision of the Court of Appeal of the Southwest Region. In which the sacked GM of SONARA in the person of Charles Metouck challenged the discretionary powers of the Limbe Court of First Instance magistrate Tatsi Theophilus that refused to admit him to bail on grounds that such a grant of the right to bail would be prejudicial to the interest of the state of Cameroon which was the complainant. However, even the appellate court still followed the same reasoning of the lower court and went ahead to dismiss applicant's bail application.

fund etc.

This landmark ruling delivered by Martin Mbeng JCA above has rather fortified the position of the law in favour of the discretionary power which the court has in matters of grant of bail in Cameroon. Thus, compounding the fate of the accused person as regards issues of bail contrary to the spirit and intent of the Criminal Procedure Code.

It is herein contended that section 222(2) CPC which states that bail may be granted upon the application of the defendant or accused cannot at the same time put or vests such a grant of a fundamental right at the discretion of the individual judge as purported by the Court of Appeal above. Thus, a constitutional right of self-bail which has been expressly created under the CPC and the 1996 Constitution as amended should not be subjected to the discretion of the person of a judge. Especially in the context of Cameroon where the executive enjoys the wide ranging powers of appointing judges and guaranteeing judicial independence as stipulated in article 37(3) of the 1996 Constitution.

The dismal performance of the judicial arm as regards its overall inability to uphold the right to bail is not unconnected to the enormous influence which the executive exerts on judges during proceedings, especially in matters where its interest or those of its members is involved as seen in the case *Justice Ayah Paul Abine v The State of Cameroon*<sup>20</sup>

It should be noted that the practice of bail in the common law jurisdiction of Cameroon is different from what obtains in the civil law jurisdiction. Limen<sup>21</sup> asserts: “while the persons in the Common jurisdiction of Cameroon by their colonial past know and have enjoyed the granting of bail during criminal litigations, this concept is strange in the Civil law jurisdictions which before the promulgation of the CPC were using the “Code d’instruction Criminelle.”

#### IV. CONCLUSION AND WAY FORWARD

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<sup>20</sup> Suit No. HCM/161/P/2017. Justice Ayah, Retired Deputy Attorney General attached to the Supreme Court of Cameroun was unlawfully abducted from his Yaounde residence by state security operatives on the instructions of his hierarchy in Yaounde. Ayah who also doubles as one time political rival of the Biya regime is said to have maintained his objective criticisms against the regime in the manner in which it is handling the ongoing political unrest in the two English speaking regions of Cameroon. Embittered by his comments the regime arrested and Ayah was initially kept incommunicado without legal aid and family visits for close to a year. After immense pressure from the national and international fronts, the purport of his arrest was made known but without formerly charging him to court. Ayah sensed a political manhunt, especially as he emerged 3<sup>rd</sup> in the 2011 presidential elections under PAP (Peoples’ Action Party), which normally placed him as a major threat to the regime in Yaounde. He seized the court, trial High Court Mfoundi in a habeas corpus proceeding. He sought a judicial review and the interpretation of his unlawful arrest and incarceration. From trial to the Apex court the judiciary played the executive bidding without an iota of remorse to defend its courageous colleague or the institution as dictated under article 37 of the constitution. Ayah remained detained unlawfully until released by a presidential clemency.

<sup>21</sup> N. Limen, “Appraising the Disparity in the Granting of Bail in the Common Law and Civil Law Jurisdictions of Cameroon: A Practice-Based Perspective”, *Neo Scientific Peer Reviewed Journal*, 2022, Vol. 3, p.12.

From the foregoing, it can be rationally concluded that section 224(1) CPC which states that a person lawfully remanded in custody maybe granted bail on condition that he fulfills one of the conditions referred to in section 226(g) CPC is an affront to the fundamental human rights of the citizens. This is because the rationale behind stringent conditions for bail when both the accused persons and the suspects are still validly and legally presumed innocent under section 8(1)(2) of the Criminal Procedure Code is nothing more than a deliberate intention to strengthen the case of the prosecution who is representing the state against an individual accused person. Thereby amounting to a gross violation of the right of the defence in the present dispensation.

It is recommended that the CPC be amended to ensure the effective protection of the right to be presumed innocent by eliminating the technical provision of bail in the CPC which is the discretion of the court. Also, the practical impediments in granting bail to suspects who fulfill the requirements for their release should be eliminated.

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**V. REFERENCES**

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